CF0000057750

(2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 75 OF 1995 Criminal Bench (Criminal

APPELLANTS :

1. Deomati, aged about 50 years, Wd./o.Bharat Gada.
2. Bihani Bai, aged about 51 years, W/o.Bharat Gada.
3. Thakur Ram, aged about 30 years, S/o.Bharat Gada.

All residents of Vill: Chachiya, P.S.:Kartala, DISTRICT:BILASPUR (M.P.)

- versus -

RESPONDENT : State of Madhya Pradesh, Through: S.H.O., P.S.Kartala DISTRICT:BILASPUR (M.P.).

Filed on 9.1.95 by Shri Sharad Vaing Advocate

R. to D.R Dt. 9-1-95

OFFENCES: U/S.201 IPC: SENTENCES: 3 YEARS' R.I. EACH FOR APPELLANTS 1&2:

OFFENCE: U/S.302 I.P.C: R.I. FOR LIFE

(46)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 75 of 1995

Deomati and others
Vs.

State of Madhya Pradesh

JUDGEMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C. BHADOO
Judge

POST FOR JUDGMENT ON 23rd FEBRUARY 2006

Sd/-
DHIRENDRA MISHRA
Judge

(47)

DIVISION BENCH: **HON'BLE SHRI L.C.BHADOO**
& HON'BLE SHRI DHIRENDRA MISHRA,JJ

CRIMINAL APPEAL NO. 75 of 1995

Appellant : **Deomati and others**

Vs.

Respondent : **State of Madhya Pradesh**

Dr. Shailesh Ahuja learned counsel for the appellants.

Shri M.P.S. Bhatia learned P.L. for the respondent/State.

JUDGMENT
(23.02.2006)

Dhirendra Mishra, J

By the instant appeal the appellants have questioned the legality and correctness of the judgment dated 15.12.1994 passed by Additional Sessions Judge, Bilaspur in Session Trial No. 363/1993 whereby he has convicted appellants No. 1 and 2 (Deomati and Bihani Bai) under section 201 of the IPC and appellant No.3 (Thakur Ram) under section 302 of the IPC and sentenced appellants - Deomati and Bihani Bai to undergo RI for three years and appellant – Thakur Ram to undergo imprisonment for life.

2. Case of the prosecution in brief is that appellants No. 1 and 2 are widows of late Bharat Gada whereas appellant No.3 is his son. Deceased Tilaso Bai was the wife of appellant No.3 Thakur Ram and daughter-in-law of appellants No. 1 and 2 namely Deomati and Bihani bai. PW-3 Sonau aged five years is the son of appellant No.3. In the intervening night of 18 & 19.8.1993 there was some quarrel between appellant No.3 after consuming liquor and in that process appellant No.3 Thakur Ram assaulted the deceased with club as a result of which she fell down on the ground. Thereafter, appellant No.3 went somewhere and returned home after consuming the liquor again and

when he found his wife alive he pressed her neck with an intention to cause her death and as a result of which Tilaso Bai died. Sonau PW-3 is the eyewitness to the incident. After the incident appellant No.3 left his son Sonau and four year old daughter in the house of his sister at village Sadukala and then he absconded. Appellants No. 1 and 2 who are the real sisters were not present in the house at the time of incident and after reaching the house they concealed the factum of death of Tilaso Bai and kept the dead body in the house. They also circulated a false news in the village that Tilaso Bai was suffering from vomiting and loose motion and they were searching the medicine for her and the same thing was told to Sukhram (PW-1) who was the Up Sarpanch at the relevant time and Abbas Khan (PW-4). Thereupon Sukhram being the Up Sarpanch of the village apprehending that the disease might flare up in the whole village sent Mehattar and Abbas Khan (PW-4) to see the condition of Tilaso Bai in her house but accused Deomati did not allow them to see Tilaso Bai on the pretext that Thakur Ram was not in the village. Thereupon PW-1 Sukhram became suspicious and along with 4-5 other persons went to the house of Thakur Ram. However, Deomati, on seeing them started weeping and said that Tilaso Bai had died due to vomiting and loose motion. Appellant Bihani Bai was also present in the house and stink was emanating as the body of decomposed and because of that stink they suspected that Tilaso Bai had died 2-3 days before thereto. Thereafter, they saw the dead body of Tilaso Bai lying on a cot covered with cloth. After removing the cloth they found that the eyes of Tilaso Bai were open and tongue had protruded and it was strongly stinking. They informed village Kotwar Duran Das and Nohar Sai. Thakur Ram and his children were not present in the house at that time. Matter was reported by Sukhram (PW-1) in Police Station Kartala on 21.8.1993 whereupon FIR (P-1) was recorded by PW-6 S.N. Kapoor who registered the offences under sections 302 and 201 of the Indian Penal Code against the accused/appellants. Inquest of body of Tilaso Bai was performed after due notice to the witnesses in

their presence. Thereafter, dead body was sent for post mortem examination to Primary Health Centre, Kartala vide Ex. P-10. Dr. Rewalal Dewangan (PW-5) conducted the post mortem on the body of Tilaso Bai and submitted his report P-11. In the post mortem report the doctor has mentioned skin was peeled off. Decomposition and putrefaction of the body had started and one lacerated injury in the size of 2x1x1/2" on the occipital region was found. However, no ligature mark was present on the neck. Whole tongue was found protruded out and the injuries found over the scalp might have been caused by hard and blunt object and the cause of death was asphyxia which might have been caused by constant pressure on the neck. Doctor has also opined that the death might have been caused 5-6 days prior to the date of examination. On further query, the doctor submitted his report stating that on internal examination after opening the skull it was found that the bone under the injury over head was intact and there was no fracture. Lungs were congested and there was water mixed blood in the heart and the cause of death might be asphyxia due to constant pressure over the neck and the injuries were ante mortem. Blood stained and plain soil was seized under P-4 from the place of occurrence. Blood stained shirt of the appellant was seized under P-5. Memorandum of appellant Thakur Ram (P-6) was recorded and club was seized on the information given by him vide P-7. Sealed packets containing Visra of the deceased as well as cloths of the deceased sent from the hospital were seized under P-8. Spot map was got prepared by the Revenue Inspector vide P-16. Spot map prepared by the Investigating Officer is P-15. Seized articles were sent for chemical examination before to the Forensic Science Laboratory, Raipur and report P-18 was submitted there from in which it was opined that blood was found over the Sari of the deceased as also over the shirt of the accused. After recording the statement of the witnesses charge sheet was filed in the Court of Judicial Magistrate First Class, Korba who in turn committed the case to the Court of Sessions Judge, Bilaspur. Learned Sessions Judge framed charge

under section 302 against accused/appellant No.3 Thakur Ram and under section 201 against appellants 1 and 2 namely Deomati and Bihani Bai respectively. Accused/appellants abjured their guilt.

3. The prosecution in order to establish its case examined in all six witnesses and thereafter statements of the accused/appellants were also recorded under section 313 of the Code of Criminal Procedure. The appellants denied the circumstances appearing against them. They examined Anwar Hussain in their defence. After hearing the Additional Public Prosecutor as also the counsel for the accused/ appellants the trial Court convicted and sentenced the appellants as mentioned in paragraph one of this judgment.

4. The only eyewitness Sonau, son of appellant No.3 aged about 5 years has not supported the case of the prosecution. However, the learned trial Judge has convicted and sentenced the appellants on the basis of circumstantial evidence and the circumstances relied upon by the trial court while convicting the appellants are described as under:

(A) deceased Tilaso Bai was last seen alive in the company of appellants by Sonau (PW-3);

(B) after the incident appellant Thakur Ram left for somewhere;

(C) appellant Deomati 3-4 days after the incident went to PW-1 Sukhram on the pretext of searching medicine for Tilaso Bai who was allegedly suffering from vomiting and loose motion;

(D) PW-1 Sukhram sent his son Mehattar and Abbas Khan (PW-4) to the house of appellant Thakur Ram to see ailing Tilaso Bai, however, appellants 1 and 2 namely Deomati and Bihani Bai did not allow them to see Tilaso

Bai, whereupon they returned and informed Sukhram about the same;

(E) Sukhram (PW-1) along with other villagers went to the house of appellant Thakur Ram and came to know that Tilaso Bai was dead and the death took place 2-3 days before thereto, and thereafter the report was lodged;

(F) The doctor (PW-5) who conducted the post mortem on the body of the deceased opined that cause of death of Tilaso Bai was asphyxia and death of homicidal in nature and on the basis of memorandum of appellant Thakur Ram recorded under section 27 of the Indian Evidence Act, terri cot shirt which was produced by him was sent for the chemical examination to FSL Raipur and on examination it was found that the said shirt contained blood. Accused Deomati and Bihani Bai though were fully aware that Thakur Ram killed his wife Tilaso Bai in their presence, with a view to screen him from the legal punishment of murder circulated a false news in the village that Tilaso Bai died due to vomiting and loose motion and thereafter they destroyed or assisted in destroying the evidence of murder.

5. Learned counsel for the accused/appellants submits that the circumstances relied upon by the prosecution have not been established by cogent evidence. The trial Court relying upon the statements of PW-3 Sonau who has turned hostile, has arrived at the conclusion that deceased was last seen alive in the company of appellants.

6. On the other hand learned counsel for the respondent/State submits that simply by declaring a witness hostile the evidence given by such witness does not completely get effaced and the evidence

remains admissible in trial and there is no legal bar to base the conviction on his testimony if corroborated by the other reliable evidence. In support of this submission learned State counsel placed reliance on the decision of the Supreme Court in the matter of **Bhagwan Singh Vs. State of Haryana** reported in **(1976) 1 SCC 389.**

7. Sonau (PW-3) son of appellant Thakur Ram aged about 5 years, was asked preliminary question by the trial Court and after recording a finding that the witness was able to understand the question and competent to answer the same, his statement was recorded without administering oath. He has stated in his evidence that accused/appellants No. 1 and 2 are his grand mothers and the deceased was his mother. He has stated that on the day when his mother died the appellants were present in the house. He stated that his mother consumed liquor and as a result of which she fell down and did not speak thereafter. He did not see anybody assaulting his mother and his father did not assault her in his presence. This witness was however declared hostile. In the cross examination this witness has stated that his father and mother were consuming liquor in the night and his grand mother was also given liquor. He denied the suggestion that his father assaulted his mother by club in his presence. However, he was not cross examined by the counsel for the accused/appellants. From the perusal of the evidence of this witness it is clear that even if the cross examination by the State is ignored, he is a witness to the fact that in the night of incident the appellants and the deceased were present in the house. There is no cross examination on behalf of the accused regarding the above fact, therefore, it can safely be inferred that in the night of incident appellants and the deceased were present in the house and they consumed liquor together. It is further argued that the doctor who performed the autopsy has categorically stated that the injury caused over the scalp of the deceased was not the cause of death and the cause of death was asphyxia due to throttling. However, no ligature

mark has been found by the doctor on the neck of the deceased and as such there is no evidence to the effect that the death was due to throttling. Dr. Dewangan (PW-5) on the basis of symptoms present on the body of the deceased such has congestion in the trachea, congestion in the lungs, water mixed blood and protruded tongue, has opined that the cause of death was asphyxia. He has further opined that deceased died 5-6 days prior to the date of post mortem examination i.e. 22.8.1993. Thus from the statement of the doctor who performed the post mortem on the body of the deceased, homicidal nature of death is established. From the post mortem report as also from the statement of Sukhram PW-1 who has stated that one day before lodging of FIR i.e. 20.8.1993 he went to the house of Thakur Ram and found that Tilaso Bai was lying on a cot and it was stinking as she appeared to have died 2-3 days earlier, it can be inferred that Tilaso Bai died on 17/18 .8.1993. This witness has further stated that Deomatibai came to his house and informed that Tilasobai was suffering from vomiting and loose motion and was searching medicines for her, whereupon being Up Sarpanch he sent his son Mehattar and Abbas Khan to see Tilaso Bai feeling that disease does not flare up in the village, however, Deomati did not allow them to see Tilaso Bai and asked that they could see her after the return of Thakur Ram. From this conduct of Deomatibai they became suspicious and went to the house of Tilaso Bai and found there her decomposed body. Thereupon, he informed the Kotwar Bhuran Das and Nohar Sai about the incident. He has also stated that in the house of Tilaso Bai Thakur Ram and his children were not present and Thakur Ram had taken them with him. On the following day i.e. 21.8.1993 he lodged the report in the police station and during investigation inquest P-3 over the dead body was performed and he signed seizure memos P-4 and P-5. He has also stated that on the information of Thakur Ram a club was recovered at his instance from his house. He also signed the memorandum P-6. In the cross examination he stated that Thakur Ram had left Sonau in the house of his aunt and on interrogation

Sonau told Police that his father assaulted his mother with club. Statement of this witness is duly corroborated by PW-4 Abbas Khan who has stated that as per the instructions of Sukhram he and Mehattar went to the house of Thakur Ram to inquire about the condition of his wife. However, he found Deomati sitting outside the house and she did not allow them to meet Tilaso Bai on the pretext that Thakur Ram was not in the house and had gone to Kartala and said that they can see her after Thakur Ram returns home.

8. From the perusal of the statement of these two witnesses it is established that Deomati circulated a false news in the village that Tilaso Bai was suffering from vomiting and loose motion on 20.8.1993 and she was searching medicine for her. In the morning when Abbas Khan PW-4 went to see Tilaso Bai but Deomati did not permit him to meet Tilaso Bai on the false pretext. However, when PW-1 Sukhram and PW-4 Abbas Khan went to the house of Thakur Ram in the evening they found there the dead body of Tilaso Bai in decomposed condition and the way it was stinking it was assessed that death took place 2-3 days before 20.8.1993. It is also established that Thakur Ram and his children were not present in the house as Thakur Ram had left them in the house of aunt from where he was taken to the police station for interrogation.

9. From the above evidence on record it can safely be inferred that;

i. the deceased was last seen alive in the company of appellants in the house of Thakur Ram and where they took liquor;

ii. Tilaso Bai died somewhere on 17/18.8.1993 in the house of Thakur Ram;

iii. body was kept in the house for 2-3 days and death of Tilaso Bai was concealed by the appellants;

iv. After the incident Thakur Ram absconded from his house and took him his child with him.

v. on 20.8.1993 Deomati circulated a false news in the village regarding sickness of Tilaso Bai and did not allow PW-4 to meet Tilaso Bai on that day;

vi. Tilaso Bai was found dead by PW-1 Sukhram and PW-4 Abbas Khan on the same evening and they also discovered that she had died 2-3 days before thereto as the dead body was stinking;

vii. death was homicidal in nature and the same occurred within 5-6 days prior to the post mortem which was conducted on 22.8.1993;

viii. shirt seized from the appellant Thakur Ram was containing blood stains as per the report of FSL P-18.

10. The above circumstances clearly point towards the guilt of appellant No.3 that he was responsible for causing homicidal death of the deceased namely Tilasobai. It is also established that appellant No.1 Deomati was knowing that her son Thakur Ram had caused death of his wife Tilaso Bai deliberately and she tried to conceal the dead body in her house and circulated a false news in the village regarding sickness of Tilaso Bai on 20.8.1993 and she did the same with an intention of screening Thakur Ram from the legal punishment of murder. However, from the evidence on record we do not find the involvement of appellant No.2 Bihani Bai in the commission of the aforesaid offence as no overt act is attributed to her. Even PW-1 Sukhram and PW-4 Abbas Khan have not stated in their evidence that on 20.8. 1993 when they went to the house of Thakur Ram, she was present in the house.

11. In the result, appeal so far as it relates to appellant No.2 Bihani Bai is allowed. She is acquitted of the charge leveled against her. She is already on bail and therefore her bail bonds are discharged. However, appeal so far as it relates to appellants 1 and 3 namely Deomati and Thakur Ram, is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge